IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1215 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Appellant(s)
Versus
MINOR JYOTIBEN CHANDRAKANT BHATT & 3 - Defendant(s)

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Appearance :

MS MAYA DESAI for MR MD PANDYA for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1 - 3.
MR MRUGEN K PUROHIT for Defendant(s) : 1 - 3.
NOTICE UNSERVED for Defendant(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 27/11/2006

ORAL JUDGMENT

The appellant – Gujarat State Road Transport Corporation has approached this Court under Section 110-D of the Motor Vehicles Act, 1939

[hereinafter referred to as 'the Act'] to challenge judgment and award made by the Motor Accident Claims Tribunal [Aux.], Rajkot in M.A.C. Petition No. 441 of 1983 dated 27th January, 1986, whereby the Tribunal has awarded a sum of Rs.34,500/- together with proportionate costs and running interest at the rate of 6% p.a from the date of the application till the realization. Appellant is the original respondent of the proceedings before the Tribunal.

2. Respondents no. 1 and 2 are the original claimants [hereinafter referred to as 'the claimants']. According to the claimants, claimant no. 1 – Jyotiben Chandrakant Bhatt, at the relevant time was studying in the school. She was a minor. The vehicular accident occurred on 11th August, 1983, at a place near Phulchhab Chowk in Rajkot city. According to the claimants, on that day when claimant no. 1 was in the process of boarding the bus belonging to the appellant and driven by respondent no. 3, respondent no. 4 – Conductor, all of a sudden rang the bell and the driver put the bus in motion. As a result of the same, claimant no. 1 lost the balance as well as grip of the handle and she fell down on the road. She sustained serious injuries. According to the claimants, there was fracture of the right leg. She also sustained serious injuries on the left leg and other parts of the body. She was, therefore, hospitalized, initially in Rajkot Civil Hospital for treatment, but thereafter she was transferred to G.T. Sheth Orthopaedic Hospital and kept there as indoor patient for a period of 20 days i.e from 11/8/1983 to 30/8/1983. During the treatment, operation on the

right leg was performed. It was also kept in plaster after the nail was inserted in the leg. It also appears that she had suffered fracture of the left leg too and that leg was also kept in plaster. The plaster was on for about 3 months. In view of the aforesaid, the father of claimant – Jyotiben filed aforesaid M.A.C. Petition before the Tribunal in his capacity as a guardian of minor. In the petition all these facts were averred and it was alleged that due to the sole negligence of respondents no. 3 and 4, namely driver and conductor respectively, the accident occurred. On the basis of the same, a claim of Rs.1 lakh was made before the Tribunal. It was averred in the petition that because of the injuries there was permanent disability.

2.1. The appellant as well as respondent no. 4 i.e driver of the offending vehicle filed written statements. They denied the averments made in the petition. According to them, when the bus was approaching the bus stand near Phulchhab chowk, the driver had slowed down the vehicle. However, on seeing the bus approaching the stand, about 20 to 25 girl students who were standing at the bus stand, rushed towards the vehicle. In the meanwhile claimant no. 1 received a violent push from behind and she fell down on the road and sustained injuries. According to them, the bus had not knocked down the victim. On the contrary, it was averred that there was a distance of about 8 to 10 feet between the bus and the victim when the incident took place.

2.2. At the hearing of the case before the Tribunal, the parties led oral as well as documentary evidence. On the basis of the material that was produced before the Tribunal, it reached the conclusion that the driver of the offending vehicle was the person responsible for causing the accident. In other words, according to the Tribunal, the sole negligence was that of respondent no. 3. Thereafter, the Tribunal on the basis of the medical record placed before it, reached the conclusion that claimant no. 1 had sustained fractures and also permanent disability and assessed the compensation at Rs.34,500/=. It is this award which is now challenged by the appellant.

2.3. Though the award is of Rs.34,500/=, the claim of the appellant is restricted to Rs.20,000/- only in this proceedings. The appellant has challenged this award mainly on the ground of contributory negligence on the part of claimant no. 1. Miss Maya S Desai, learned advocate for the appellant has taken me through the record of the case and in particular the oral evidence of the witnesses. She has submitted that considering the evidence of respondents no. 3 and 4, namely the driver and conductor, it becomes obvious that it was the girl who was at fault and she suffered injuries not because of any negligence on the part of the driver of the bus, but because she received a push from behind while she and other colleague students waiting for bus, rushed towards the bus for boarding it. She has also submitted that the Tribunal has erred in not accepting the version given by both these witnesses who have been acquitted in

the criminal case. According to her, award of Rs.34,500/- is exorbitant and erroneous, particularly when there is material to establish that it was victim girl i.e., claimant no. 1 who received injuries because of her own fault and not because of any negligent act of the driver of the bus.

2.4. As against that, submission of Mr. Purohit, learned advocate for the claimants is that the judgment and award made by the Tribunal are just and proper and no interference by this Court is required.

3. Having considered the submissions made by Miss Desai as well as Mr. Purohit and having gone through the record of the case and in particular the oral evidence of the witnesses, it clearly appears that claimant no. 1 received certain serious injuries on both the legs on 11th August, 1983. It is to be seen whether these injuries were caused due to the negligent act of respondent no. 4 or because of any negligence on the part of victim herself.

3.1. The claimant no. 1 has stepped into the witness box and she has given her evidence at Exh. 22. In the evidence she has stated that on 11th August, 1983 she was studying in Kotak Kanya Vinay Mandir. She has stated that on that day around 5.30 p.m when the school hours were over, she and her friends came to the bus stand near Phulchhab chowk. They were waiting for the bus. At that time bus plying on route no. 1-A arrived there and stopped at the

bus stand. The persons waiting at the bus stand boarded the bus. According to her, while she was climbing the steps by holding the iron rod, the conductor all of a sudden gave a signal to proceed and the bus started. She has also stated in her evidence that she fell down and sustained injuries. She has stated that the driver as well as conductor i.e respondents no. 3 and 4 were prosecuted for rash and negligent act. She has also stated in her evidence the details about the injuries and the hospitalization. It appears that she was hospitalized for about 20 days. She, therefore, claimed that there was disability suffered by her and certificate to that effect has been issued by the concerned Medical officer. The Tribunal has considered all the facts regarding the injuries and the treatment taken by claimant no. 1 and the other material and has come to the conclusion that she was entitled to receive compensation of Rs.34,500/=.

3.2. Driver of the bus has given evidence which is at Exh. 30. He is Husenbhai Rahimbhai. According to him, the place near the Chandni chowk is very crowded and he was driving his vehicle very slowly. I is his say that when he was about to approach the bus stand, he saw a crowd of girls comprising about 20 to 25 numbers, rushing towards the bus and in the process claimant no. 1 fell down on the road and sustained injuries. It is his say that the bus had never dashed against the claimant. The evidence of conductor is also on the same line. However, the Tribunal disbelieved their evidence and held that it was respondent no. 3 who alone was negligent.

4. Having considered the record as well as submissions of Miss Desai, it becomes clear that victim had sustained serious injuries on the legs i.e fractures on both the legs. Her evidence deserves to be accepted, because there is no reason for her to file a false claim. Apart from that, she has categorically stated that when she was in the process of boarding the bus, it all of a sudden started and she fell down on the road. As against that, the driver and the conductor have denied this fact. This is but natural because they would be interested in saving their skin since they were facing prosecution. It is difficult to believe that the conductor was in a position to watch the entire incident. His version is not at all probable. So far th driver is concerned, he has thrown blame on the victim herself. However, it is to be noted here that so far the Tribunal is concerned, it has determined the issue of negligence in favour of the claimants and awarded Rs.34,500/=. In the present appeal, the claim has been restricted to only Rs.20,000/= on the ground of contributory negligence. Therefore, even the appellant has admitted in this appeal part of negligence of the driver. Therefore, driver does not tell the truth when he says that the bus never collided with the victim. His evidence also, on this point, cannot be accepted. When evidence of both the witnesses examined by the appellant suffers from infirmities, the only reliable evidence that remains on record is the evidence of claimant no. 1 i.e the victim herself. Her say is required to be accepted fully. She has categorically stated that she has sustained injuries on account of negligence of both, namely conductor as well as driver. Both these

persons are employees of appellant. Hence, appellant is vicariously liable to pay compensation to the victim. In this appeal, there is no challenge that quantum of compensation or its assessment made by the Tribunal is faulty. When this Court does not find any contributory negligence on the part of the injured claimant, there is no need to allow this appeal. In other words, this appeal has no merit and it is dismissed with costs.

[Akshay H Mehta, J.]

* Pansala.